IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 13TH FEBRUARY 2007 / 24TH MAGHA 1928

Crl.MC.No. 2777 of 2006()

CC.73/2005 of CHIEF JUDL.MAGISTRATE, ERNAKULAM

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PETITIONER: ACCUSED

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1. M/S.PEARL PET PACKAGINGS PRIVATE LIMITED, 4/80B, 4TH CROSS STREET FIRST NORTH MAIN ROAD, KAPALEESWAR NAGAR, NEELANGARI, CHENNAI, REPRESENTED BY MANAGING DIRECTOR, MR.RAMESH.

2. RADHIKA RAMESH, DIRECTOR & AUTHORISED SIGNATORY OF M/S.PEARL PET PACKAGINGS PRIVATE LIMITED, 4/80B, 4TH CROSS STREET FIRST NORTH MAIN ROAD, KAPALEESWAR NAGAR, NEELANGARI, CHENNAI, REPRESENTED BY MANAGING DIRECTOR MR.RAMESH.

BY ADV. SRI.S.M.PREM
SMT.K.P.SANTHI

RESPONDENTS: COMPLAINANT

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1. STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

2. MAHARAJ CONTINENTAL TRADES LIMITED, HAVING ITS REGISTERED OFFICE AT IST FLOOR, SYAMANTHAKAM PALLIYIL LANE, COCHIN-16, REPRESENTED BY POWER OF ATTORNEY HOLDER, VINOD KUMAR, AGED 44 YEARS, SON OF LATE RAMAN NAIR, VADAKE HOUSE, KANNAMBARA, PALAKKAD.

R1 BY PUBLIC PROSECUTOR SRI.S.U. NAZAR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 13/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 2777 of 2006

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Dated this the 13th day of February, 2007

O R D E R

The petitioners are accused facing allegations under Section 138 of the N.I. Act. Trial has commenced on 1.8.2006. The proof affidavit was filed and the documents were marked. The accused was absent. The counsel was not ready for cross examination. The matter was posted to 9.8.2006 with the endorsement that no further time shall be granted.

2. On 9.8.2006, the complainant and the accused were absent. The learned Magistrate is seen to have posted the case for S.313 examination. The grievance of the petitioners is that the learned Magistrate posted the case for S.313 examination even before giving the petitioners an opportunity to cross examine the complainant.

3. I have been taken through Annex.II, which is a certified copy of the order sheet maintained by the learned Magistrate. On going through the order sheet the grievance of the petitioners appears to be justified. On 1.8.2006, the order sheet would reveal that the next posting to 9.8.2006 was for cross examination of the

complainant with a direction that there shall be no further time. But on 9.8.06 though the complainant was absent, the case was posted for S.313 examination. Obviously the procedure adopted by the Magistrate is incorrect.

4. Though the respondent is served, there is no appearance for the respondent. I am satisfied that it is not necessary to wait any longer for the appearance of the respondent. Interests of justice shall be served eminently by directing that the learned Magistrate shall not proceed further without and before giving the petitioners an opportunity to cross examine the complainant, whose affidavit in chief has already been received.

5. This Crl.M.C. is allowed in part to the extent indicated above.

6. Hand over a copy of the order to the learned counsel for the petitioners for production before the learned Magistrate.

(R. BASANT)
Judge

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